

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12961 of 1993

For Approval and Signature:

Hon'ble THE CHIEF JUSTICE MR. K.SREEDHARAN and
MR.JUSTICE K.R.VYAS and
MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

GUJARAT MAZDOOR SABHA

Versus

STATE OF GUJARAT

Appearance:

MR GIRISH PATEL for Petitioners
Mr.S.N. Shelat, Additional Advocate General,
with MR DA BAMBHANIA for Respondent No. 1
MR R.C. Jani, for Respondent No. 2

CORAM : THE CHIEF JUSTICE MR. K.SREEDHARAN and
MR.JUSTICE K.R.VYAS and
MR.JUSTICE N.N.MATHUR

Date of decision: 08/05/98

ORAL JUDGEMENT: (Per K. Sreedharan, C.J.)

1. On a Reference made by a Division Bench, this case has come before us in Full Bench. In the Reference

Order, learned Judges of the Division Bench doubted the correctness of the decision rendered by another Bench in the case reported as T.R. Mishra & Others v. State of Gujarat & Others, 1990(2) G.L.H. 506. In the reported decision, this Court took the view that Labour Court and Industrial court are not covered by the expressions "District Judge" and "Judicial Service", within the meaning of Articles 235 and 236 of the Constitution and they are not under the administrative control of the High Court. The correctness of this view is the issue to be dealt with.

2. Petitioners are registered Trade Unions, representing large number of workmen engaged in various Industries in the State of Gujarat. Their prayer is to declare Sections 7 and 7A of the Industrial Disputes Act and Sections 9 and 10 of the Bombay Industrial Relations Act, 1946 as ultra vires the Constitution in so far as they empower the Government to appoint Judges of Labour court, Industrial Courts and Industrial Tribunals without consultation with the High Court of the State. They also prayed for restraining the respondents from appointing, promoting or transferring any Member of the Labour Judiciary without consultation with the High Court of Gujarat.

3. Industries engaging Labourers have come to occupy a pivotal position in the development of the Nation. Development depends upon the smooth functioning of the Industries, which, in turn, depends upon the relationship between the employer and the employee. Whenever any bickering between these two takes place, the labour adjudicatory system has to play a vital role. Industrial disputes are to be settled in the most amicable and efficient manner. Industrial peace, prosperity and progress depend upon the efficiency of the Settlement Machinery. For arriving at such settlement, Industrial Law recognises Labour Judiciary. Industrial Disputes Act, 1947 provides for two kinds of forum, viz., Labour Courts for certain industrial disputes, and Industrial Tribunals for certain other types, though their jurisdiction overlaps in some respects. The Bombay Industrial Relations Act is made applicable to certain Industries in the State of Gujarat. That enactment provides two types of Courts, viz., Labour Courts and Industrial Courts. Industrial Courts are superior to the Labour Courts, thereby establishing a hierarchy of Labour Judiciary. In the State of Gujarat, some Labour Courts work both under the Industrial Disputes Act and the Bombay Industrial Relations Act. Some Judges work both as Industrial Tribunal under the Industrial Disputes Act

and as Industrial Court under the Bombay Industrial Relations Act. The Labour Judiciary is, thus, the centre of the system of Industrial adjudications in the State of Gujarat.

4. It is now beyond doubt that the Labour Judges occupy a very important position in adjudicating the disputes between the Management and the Labour. The disputes, which are brought before the Labour Judiciary, involve huge stakes, both for the Management as well as the workers. States in India, being Welfare States, have economic activities. State owned establishments are engaged in carrying on industries. Thus, in a large number of industrial disputes, State is one of the parties taking the part of the employer. In this context, the method of appointment of the Labour Judiciary assumes great importance. It is absolutely necessary that the Labour Judges should be highly qualified, experienced, independent and committed to the Constitution of India. In other words, Labour Judiciary should be independent of the Executive Government as is the case of the Judiciary under the Constitution. On this basis, the petitioners urge that the Labour Judiciary must be taken out of the control of the Executive Government. They, therefore, want the Industrial Courts and Labour Courts to fall within the ambit of Articles 233 to 237 of the Constitution.

5. Supreme Court, in the decision in *The State of Maharashtra v. Labour Law Practitioners' Association and Ors.*, JT 1998(1) SC 604, considered the relevant provisions of the Industrial Disputes Act and the Bombay Industrial Relations Act and came to the conclusion that the Labour Court Judges and Judges of the Industrial Court belong to "Judicial Service", as that expression is understood in Chapter VI of the Constitution of India. According to the decision, the expression "District Judge" covers a Judge of any Principal Civil Court of Original Jurisdiction and includes the hierarchy of specialised Civil Courts, such as Labour Courts and Industrial Courts. The term 'Courts' will cover all Tribunals, which are basically courts, performing judicial functions, giving judgments, which are binding. They are exercising sovereign judicial power transferred to them by the State. Men, who could be described as 'independent' and having sufficient judicial experience, must alone, according to Their Lordships, be selected as Labour Court Judges. The conclusion arrived at was that persons presiding over Industrial and Labour Courts constitute a Judicial Service and their recruitment should be in accordance with Article 234 of the

Constitution. This decision of the Supreme Court gives a quietus to the dispute raised in this petition. In the light of this pronouncement made by the Apex Court, we have no hesitation in holding that the law laid down by this Court in T.R. Mishra & Others v. State of Gujarat & Others, 1990(2) G.L.H. 506, is not good law. We overrule the same.

6. Section 7-A(3)(d), of the Industrial Disputes Act as per the Gujarat Amendment, allows an Assistant Commissioner of Labour, having not less than 10 years of service as such, to be appointed as Industrial Tribunal provided he holds a Degree in Law of a University established by law in any part of India. Section 9 of the Bombay Industrial Relations Act, 1946 also allows the State to appoint the Registrar of a Labour Court or an Industrial Court or an Assistant Commissioner of Labour, having not less than five years' service as Industrial Tribunal, provided he holds a Degree in Law of a University recognised by Law. Section 10 of that Act contains a similar provision, which permits the Government to appoint an Officer of the State Government not below the rank of Assistant Commissioner of Labour, possessing a Degree in Law of a University, established by Law and having not less than 10 years' service. These provisions, according to learned counsel representing the petitioners, are against Chapter VI of the Constitution, for, it allows persons having no legal background to be appointed as Presiding Officers of the Labour Court and the Industrial Court. Relying on the decision of the Apex Court in Shri Kumar Padma Prasad v. Union of India, (1992) 2 SCC 428, it was argued that only those who exercised judicial functions and determined causes inter partes and rendered decisions in judicial capacity, can be appointed as Labour Court Judges or Industrial Court Judges. This point is not to be gone into by us in this case in the absence of pleadings and reply in that regard. So, we leave this question open.

7. In view of the above conclusions arrived at by us, we direct the respondents that no appointment, promotion or transfer of the Presiding Officers of Labour Courts, Industrial Courts or Industrial Tribunals under the Industrial Disputes Act, 1947 or the Bombay Industrial Relations Act, 1946 be made or ordered without complying with the provisions of Chapter VI of the Constitution of India.

8. Special Civil Application is disposed of as above. We make no order as to costs.

(apj)